

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COMMISSIONER OF EDUCATION

RESIDENCY OF M. DOE, by his mother, :  
*Petitioner*,:

vs. :

CUMBERLAND SCHOOL :  
DEPARTMENT, :

*Respondent*:

**DECISION**

Held: Sixth grade child is effectively a “resident” of town where he resides, part-time, with his father under RIGL § 16-64-1 and his divorced parents, although residing in different towns, had the option of sending him to a school where either resides since under the parties’ agreed statement of facts the parents had joint custody and were both exercising actual custody over the child by sharing responsibility for his care, shelter, and education.

DATE: November 17, 2015

## **1. Jurisdiction, Standard of Review, and Burden of Proof**

Petitioner, STUDENT M. DOE, by his mother (“Petitioner”), filed an appeal with the Commissioner seeking to reverse Respondent CUMBERLAND SCHOOL DEPARTMENT’s decision that it was not legally responsible for educating M. Doe, a sixth-grader at the McCourt Middle School in Cumberland on the ground that M. Doe was not a resident of the Town.

In an October 23, 2015 letter to the Commissioner Petitioner argued that M. Doe and his father are in fact residents of Cumberland under RIGL § 16-64-1, and requested that M. Doe be permitted to continue to attend the McCourt Middle School. M. Doe has been permitted to remain in attendance at the School during the pendency of these proceedings.

The Commissioner has jurisdiction over the controversy under RIGL § 16-64-6, and like appeals from school committee actions under § 16-39-2, residency disputes are heard *de novo*.<sup>1</sup> The burden of proof is on the Petitioner.<sup>2</sup>

## **2. The Agreed Statement of Facts**

At a pre-hearing conference on November 6, 2015 the parties in attendance – the Petitioner, M. Doe’s father, Cumberland School Department’s Truant Officer, as well as counsel for the Cumberland School Department – all agreed to waive their right to an evidentiary hearing and to submit the case for decision based upon the following Agreed Statement of Facts:<sup>3</sup>

---

<sup>1</sup> See, e.g., *Alba v. Cranston School Committee*, 90 A.3d 174, 184-85 (R.I. 2014) (quoting rule); *Slattery v. School Committee of City of Cranston*, 116 R.I. 252, 262, 354 A.2d 741, 747 (1976) (“one who appeals to the commissioner is entitled to ‘a *de novo* hearing’ and not ‘merely a review of [the] school committee action’”); *School Committee of City of Pawtucket v. State Bd. of Ed.*, 103 R.I. 359, 364, 237 A.2d 713, 716 (1968) (commissioner’s jurisdiction “considerably broader than that of this court in reviewing an appeal” since “it is clear that § 16–39–2 and precursory legislation give the commissioner of education the right to make a *de novo* decision in examining and deciding the issue involved”).

<sup>2</sup> See, e.g., *Student P. Doe v. North Smithfield School Committee*, RIDE 0027-11 (December 23, 2011) at 3. (Petitioner has burden of proof in typical residency case); see also § 16-64-3 (when alleged that “child’s residence has been changed due to break-up of child’s family . . . the party alleging the existence of these circumstances shall have the burden of proof and shall make proof by a preponderance of the evidence”).

<sup>3</sup> Counsel for the Woonsocket School Department was notified of the pre-hearing conference but elected not to attend. Woonsocket’s counsel also did not object to proceeding pursuant to an agreed statement of facts after having been provided with a copy of the relevant Consent Order.

1. M. Doe attended public school in Woonsocket, Rhode Island during grades K through 5 and until six (6) months ago, resided in Woonsocket.
2. M. Doe's parents are divorced and have joint custody, each with all reasonable rights of visitation.
3. M. Doe began attending the McCourt Middle School in Cumberland at the beginning of the 2015-16 academic year.
4. At all relevant times, M. Doe has resided:
  - (a) with his father in the Town of Cumberland from Thursday night through Monday, i.e., four days (Friday, Saturday, Sunday and Monday) and four nights (Thursday, Friday, Saturday and Sunday); and
  - (b) with his mother in the Town of Woonsocket from Monday night through Thursday, i.e., three days (Tuesday, Wednesday and Thursday) and three nights (Monday, Tuesday and Wednesday).
5. Although he does not have an individualized education plan, M. Doe has been diagnosed and takes medication for attention deficit hyperactivity disorder and an obsessive compulsive disorder.
6. M. Doe was bullied while attending school in Woonsocket and was bit by a child in his neighborhood while living in Woonsocket.
7. M. Doe has not been bullied and has been doing well academically and otherwise while attending school in Cumberland, and both his parents believe continuing to attend school in Cumberland is in his best interest.
8. M. Doe has been experiencing anxiety at the prospect of having to return to school in Woonsocket.

### **3. Discussion**

RIGL § 16-64-1 provides in pertinent part that “[a] child shall be deemed to be a resident of the city or town where his or her parents reside.” Thus, by its terms, the statute creates a rebuttable presumption of residency for school enrollment purposes predicated upon the residence of a student’s parents. When, as here, the parents live in different towns, § 16-64-1

provides that “the child shall be deemed to be a resident of the city or town in which the parent having actual custody of the child resides.” *Id.*

The case of *Residency of Student D.R. Doe*, RIDE 0022-00 (June 26, 2000) is instructive.

In that case, the Commissioner noted that:

in our prior rulings we have looked to the ‘number of school nights’ that a student spends in a community to define, at least to some extent, which community is responsible for educating a student who is, in actuality, living in two different communities. We note that there is nothing in the residency statute that mandates the use of the ‘school nights’ rule. We have adopted this rule, more an as ‘rule of thumb’ than a rule of evidence. While we are still convinced that the ‘school nights’ rule gave the correct result in all the cases it has been used in, we do not think that it is a rule of universal application.

For example, in the present case the truth of the matter is that both parents are exercising actual custody over this student. Although the parents of this child are living in different towns they are still sharing responsibility for his care, shelter, and education. We believe that the public schools should be as supportive as possible for parents who are striving to fulfill their responsibilities under such difficult circumstances. ***We therefore think that in cases where both parents, while maintaining residences in different communities, are sharing actual custody of the child, the better rule is to allow the parents the choice of which of the two communities they wish to enroll their child in. Since both parents, in such cases are, in fact, exercising actual custody over their child, no departure from the language of the statute has occurred.***

*Id.* at 2 (emphasis added); see also *In the Matter of the Residency of Student K. Doe*, RIDE 0022-11 (September 21, 2011) at 4 (rejecting “school nights’ rule” when student’s father was “truly exercising actual custody of his son when he is in his care Monday afternoon and evening, Thursday, Friday and every other weekend”).

Here, the stipulated evidence makes clear that both of M. Doe’s parents “are exercising actual custody” over M. Doe and although they live in different towns, they are still both “sharing responsibility for his care, shelter, and education.” Indeed, rigid application of the old “school nights’ rule” would be particularly inappropriate here because even though M. Doe’s mother has custody in Woonsocket for three (3) of four (4) school nights, in total, M. Doe’s

father has custody more of the time in Cumberland, i.e., during all remaining four (4) nights per week.

Applying the “better rule,” M. Doe’s parents had the option of sending M. Doe to a school in either Cumberland or Woonsocket, and since they exercised the option favor of Cumberland, M. Doe is effectively a “resident” of the Cumberland under § 16-64-1.

#### **4. Conclusion**

For all the above reasons, Petitioner’s October 23, 2015 appeal is granted, the Respondent Cumberland School Department’s decision that it was not legally responsible for educating M. Doe is reversed, and M. Doe shall have the right to attend a public school in Cumberland for as long as he continues to remain a “resident” of the Town under RIGL § 16-64-1.

For the Commissioner,

---

Anthony F. Cottone, Esq.  
Hearing Officer

Dated: November 17, 2015

---

Ken Wagner,  
Commissioner